

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
JOHN R. CANTRELL,)	Bankruptcy Case No. 96-60021
Debtor.)	
PROGRESSIVE INSURANCE CO.)	
and SHELTER INSURANCE CO.,)	
Plaintiffs,)	
vs.)	Adversary Case No. 96-6005
JOHN R. CANTRELL,)	
Defendant.)	

OPINION

This matter having come before the Court on a Motion to Dismiss filed by Defendant, John R. Cantrell; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

On March 15, 1996, Plaintiffs, Progressive Insurance Co. and Shelter Insurance Co., filed the instant adversary proceeding pursuant to 11 U.S.C. § 523, seeking a judgment of non-dischargeability as to certain sums of money paid on behalf of the Defendant to one Wendell Ely as a result of an automobile collision involving the Defendant who was alleged to have been intoxicated at the time. On April 19, 1996, the Defendant filed the instant Motion seeking to have the adversary Complaint dismissed arguing that, as subrogees of Wendell Ely, the Plaintiff insurance companies were not entitled to seek a determination of non-dischargeability under the Bankruptcy Code.

There is no dispute that the Plaintiffs herein, Progressive Insurance Co. and Shelter Insurance Co., are subrogated to the claims of Wendell Ely as against the Debtor as a result of payments made by each

insurance company to Wendell Ely as a result of an automobile accident on July 9, 1994. It is further undisputed that the Plaintiffs herein are State Court Judgment holders, having received a Judgment against the Defendant in the Circuit Court for the Second Judicial Circuit, Richland County, Illinois, in Case No. 95-L-15, on January 11, 1996. It is this Judgment and the subrogation rights of the parties that gave rise to the instant adversary proceeding and the issue as to Plaintiffs' standing raised in the Motion to Dismiss.

Conclusions of Law

The general rule of subrogation is that the subrogee stands in the shoes of the prior claim holder, and, as such, "is substituted to all rights and remedies" of the prior claim holder as though the subrogee were the prior claim holder. Black's Law Dictionary, 1595 (4th Ed., 1968); In re Richardson, 178 B.R. 19 (Bankr. D. Colo. 1995); and In re Snellgrove, 15 B.R. 149 (Bankr. S.D. Fla. 1981). In the instant case, there is no question that the Plaintiffs are subrogated to the rights of Wendell Ely as a result of their payment on his claims for personal injuries arising out of an automobile accident wherein the Defendant was allegedly intoxicated. The Court has been able to find no case authority which would indicate that, as subrogees, the Plaintiffs would not have standing to challenge the dischargeability of a debt pursuant to 11 U.S.C. § 523. Additionally, the Court finds that, under 11 U.S.C. § 509, an entity that has paid a claim on behalf of a creditor of the debtor is subrogated to the rights of such creditor to the extent of the payment. See: In re Norris, 107 B.R. 592 (Bankr. E.D. Tenn. 1989). Case law addressing this issue overwhelmingly supports the proposition that a subrogee may assert the creditor's right to non-dischargeability under § 523. See: In re Snellgrove, *supra*, at 151; In re Fields, 926 F.2d 501, at 504 (5th Cir. 1990).

In conclusion, the Court finds that, as subrogees of the Creditor, Wendell Ely, the Plaintiffs herein stand in the shoes of Wendell Ely and may assert his right to bring an action to determine the issue of dischargeability, under 11 U.S.C. § 523, of the debt and claim resulting from the automobile accident on July 9, 1994.

ENTERED: May 31, 1996

/s/ GERALD D. FINES
United States Bankruptcy Judge